

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

DAVID WHEELER,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-CV-37

**LT. AARON SIMONTON, PAUL KUHN,
JASON KUHN, JOSH HENTHORNE,
ROBERT VANMETER AND JOHN DOE,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Opinion/Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order this action was referred to Magistrate Judge Kaull for submission of a report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on September 2, 2010 [Doc. 36].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v.***

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on September 3, 2010. No objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Doc. 36]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** as follows:

(1) the defendants' Motion to Dismiss **[Doc. 24]** shall be construed as a Motion for Summary Judgment, and the same is **DENIED**;

(2) the plaintiff's Motion for Extension of Time to File a Response **[Doc. 28]** is **GRANTED to the extent that** the response filed on July 1, 2010, be deemed timely filed;


(3) the plaintiff's Motion for Discovery **[Doc. 29]** is **GRANTED to the extent** that he seeks permission to conduct discovery and that the discovery deadlines and other relevant matters be scheduled pursuant to a separate order; and

(4) the defendants' Motion for a Protective Order **[Doc. 32]** is **DENIED WITHOUT PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: November 9, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE